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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 1101

CEVAL NEAL,

Petitioner,

vs.

STATE OF MARYLAND.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND AND BRIEF IN SUPPORT THEREOF.

ELDRIDGE HOOD YOUNG,
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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND.

To the Honorable, Harlan Fiske Stone, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Ceval Neal, (one of the appellants in the Court of Appeals of Maryland) respectfully shows and represents unto your Honors and prays that a writ of ceritiorari be issued to review the judgment of the Court of Appeals of Maryland, entered in the above entitled cause on the 13th day of January, 1942 (R. 167).

I.

SUMMARY AND STATEMENT OF MATTERS INVOLVED.

The following statement of the facts and of the questions involved here are taken from the record of the trial in the Criminal Court of Baltimore City and the appeal thereupon to the Court of Appeals of Maryland.

The petitioner here, Ceval Neal, and four others, Thomas M. Hubin, Edward Leon, Francis Schussle and Allen Maged, were charged with bookmaking, (Indictment, R. 10 to 15), a statutory offense, Flack's Code Maryland P. G. L. Article 27, section 291, after being arrested during a raid carried out by Baltimore City Police Department by virtue of an illegal "search and seizure warrant".

The petitioner here has been tried twice under the same indictment, (Oct. 1, 1940 and February 10, 1941, Docket Entries, R. 6 and 8), after the first conviction by a jury a new trial was ordered. The traverser Allen Maged elected to be tried by the judge without a jury and was acquitted (Oct. 3, 1940, Docket Entries, R. 6).

Before the first trial all of those who had been arrested during the raid filed motions: to quash the illegally issued "search and seizure warrant", (R. 15-16); to quash the indictment (R. 17-18); demanded particulars, demurred, etc., (R. 18-23) and before the second trial similar motions were filed (R. 23-31). Evidence consisting of rundown sheets, telephone equipment, racing forms, etc., was seized by the police during the raid under the illegal search and seizure warrant, and without the things thus seized during the raid no case could have

been made out against the traverser. The motion to quash the search and seizure warrant attacked its validity for several reasons, viz., because it was issued:

1. Without probable cause,
2. In violation of Federal Communications Act,
3. In violation of Maryland Constitution and Bills of Rights, and
4. In violation of the Federal Constitution, without due process of law and against the law of the land,

and prayed that the warrant be quashed and the property seized returned to the traversers and suppressed as evidence against them (R. 15-16).

There is no controversy of either law or fact that the search and seizure warrant was illegally issued. The State of Maryland admitted that fact when it demurred to the motion (R. 16), and the Criminal Court of Baltimore City construed it to be the law, but attempted to evade the effect of that construction and did not order the property illegally seized returned to the traversers under the plain mandate of the statute, providing for search warrants (Md. Code P. G. L. Flack, Art. 27, section 306), viz:

> "* * * If, at any time, on application to a Judge of the Circuit Court of any County or of the Criminal Court of Baltimore City, it appears that the property taken is not the same as that described in the warrant or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, said judge must cause it to be restored to the person from whom it was taken; but if it appears that the property taken is the same as that described in the warrant and that there is probable cause for believing the existence of the grounds

> on which the warrant was issued, then said judge shall order the same retained in the custody of the person seizing it or to be otherwise disposed of according to law."

At the trial of the case before the jury, the petitioner here, to preserve his rights, as asserted under the motions to have the search and seizure warrant, confessedly illegally issued, quashed and the property seized thereunder returned, objected to the introduction of the articles seized in the raid, under the illegal warrant, but these objections were overruled.

The petitioner further showed that he was a regular employee of the B. & O. Railroad, having entered the service on July 26, 1916 and was on furlough from April 2, 1940 to July 16, 1940.

After the jury found the traversers, including your petitioner, guilty on the second, third, fourth, sixth, eighth, ninth, tenth, thirteenth and fifteenth counts of the indictment, in addition to filing motions for a new trial (which under the law and practice in Baltimore City are heard by the eleven judges constituting the eighth circuit or Supreme Bench of Baltimore City) a motion to quash the indictment was filed, (R. 31) to which the State of Maryland entered a motion "not to receive" and this motion to quash was overruled by the Criminal Court of Baltimore City (R. 32).

The Court of Appeals of Maryland in considering the rulings of the Criminal Court of Baltimore on the several motions ruled on this motion only, saying in the opinion, (R. 163):

> "The action of the trial judge was therefore correct in refusing to quash the indictment"

beginning the comments, which resulted in the above conclusion, by stating, (R. 161):

> "The principal question in this case is whether evidence obtained by means of wiretapping is admissible in the Courts of this State * * *"

and affirming the trial court in overruling the motion to quash the indictment (R. 167).

The action and ruling of the trial court in overruling the motion to quash the illegally issued search and seizure warrant and return the property seized thereunder, afterwards admitted into evidence, and suppress the same as evidence was ignored.

These motions (R. 15-16, and 23-24) in addition to asserting that the search and seizure warrant was illegally issued because in violation of wiretapping (Federal Communications Act of 1934, 48 Stat. at L. 652, 1064, 1103, 47 U. S. C. Sec. 605, etc.) alleged that the same was issued:

1. Without probable cause,

3. In violation of the Maryland Constitution and Bill of Rights, and

4. In violation of the Constitution of the United States, without due process of law and against the law of the land.

That these were facts the State of Maryland admitted (by its demurrer, R. pp. 16 and 24), but the Court of Appeals of Maryland did not comment or pass upon these uncontroverted facts, it contented itself with stating that evidence obtained by wiretapping was admissible in the Maryland Courts although inadmissible in Federal Courts, and, ergo, by failing to hold that the

Police Department of Baltimore City in its zeal to convict the petitioner here of a statutory crime had illegally procured a search and seizure warrant and obtained evidence by seizure thereunder, both the Federal and State Constitutions, and Bill of Rights of Maryland were violated, and that the proceedings were without due process of law and against the law of the land; or neglecting to consider or rule on the same, committed error of which this Honorable Court has jurisdiction and should correct.

II.

QUESTIONS PRESENTED.

1. The Petitioner here was deprived of a fair and impartial trial, deprived of his liberty in violation of the law of the land, denied due process of law, denied equal protection of the laws:

(a) In that evidence was admitted at the trial seized under and by virtue of a search and seizure warrant illegally obtained and issued, without probable cause; in violation of the Federal Communications Act of 1934; in violation of the Maryland Constitution and Bill of Rights; in violation of the Constitution of the United States, without due process of law and against the law of the land.

(b) In that it is in violation of the due process clause of the 14th Amendment of the Constitution of the United States for the State of Maryland to admit on the record as a fact that evidence to initiate and convict was illegally and unlawfully obtained by process issued in violation of the United States Constitution and the Constitution and Bill of Rights of Maryland.

(c) In that it is in violation of the "equal protection of the laws" clause of the 14th Amendment of the Constitution of the United States to enact a law that evidence obtained by unlawful search and seizure is inadmissible in trials of misdemeanors (Md. Acts 1929, ch. 194; Code, Art. 35, sec. 5) and "that where search and seizure warrant is issued without probable cause, the property seized shall be restored", (Md. Act 1939, ch. 749; Code, Art. 27, sec. 306); then admit on the record that the property was seized under a search and seizure warrant issued without probable cause, but nevertheless refuse to restore the property seized and later admit the same into evidence at the trial.

III.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

(a) That the Court of Appeals of Maryland has decided a Federal question invoking the construction and application of the 14th Amendment to the Constitution of the United States in conflict with applicable decisions of this Court.

(b) That the Court of Appeals of Maryland, affirming the judgment of the Criminal Court of Baltimore City, has denied, in the case at bar, to a citizen of the United States due process of law in violation of the 14th Amendment to the Constitution of the United States.

(c) That the Court of Appeals of Maryland, in the case at bar, has denied to a citizen of the State of Maryland, the equal protection of the law, guaranteed under the Constitution of the United States and the Amendments thereto.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court to the Court of Appeals of Maryland commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record of the proceedings in cases numbered and entitled on its docket for the October Term 1941, No. 42, Thomas M. Hubin, Edward Leon, Allen Maged, *Ceval Neal,* Francis Schussle, appellants, vs. State of Maryland, appellee, and No. 43, Thomas M. Hubin, Edward Leon, Allen Maged, *Ceval Neal,* Francis Schussle, appellants, vs. State of Maryland, appellee, and that said judgment of the Court of Appeals of Maryland may be reversed by this Honorable Court, and that your petitioner have such other and further relief in the premises as to this Honorable Court may seem equitable, just and proper.

ELDRIDGE HOOD YOUNG,
Counsel for Ceval Neal, Petitioner.